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LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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VICTOR M. SANTOS,

Plaintiff,

JURY TRIAL DEMANDED
Docket No.: CV 03 0185

-against-

BRENDON FORTE, individually and as a police officer of the Suffolk County, New York Police Department; BRIAN STEVENS, individually and as a police officer of the Suffolk County, New York Police Department; SCOTT E. WELSHIMER, individually and as a police officer of the Suffolk County, New York Police Department; "JOHN DOE", individually and as a police officer of the Suffolk County, New York Police Department; "MICHAEL MOE", individually and as a police officer of the Suffolk County, New York Police Department; "RICHARD ROE", individually and as a police officer of the Suffolk County, New York Police Department; "NORRIS NOE", individually and as a police officer of the Suffolk County, New York Police Department; "ORIN OH", individually and as a police officer of the Suffolk County, New York Police Department; "PETER POE", individually and as a police officer of the Suffolk County, New York Police Department; "LAWRENCE LOE", individually and as a police officer of the Suffolk County, New York Police Department; WILLIAM PLANT, individually and as a detective of the Suffolk County, New York Police Department; THOMAS MACALUSO, individually and as a detective of the Suffolk County, New York Police Department; JOHN SHAY, individually and as a police officer of the Suffolk County, New York Police Department; MICHAEL KINAHAN, individually and as a police officer of the Suffolk County, New York Police Department; ROBERT BAUTZ, individually and as a police officer of the Suffolk County, New York Police Department, and COUNTY OF SUFFOLK,

Defendants.
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PROPOSED AMENDED COMPLAINT

Introductory Statement

1. This is an action for damages sustained by a citizen of the United States against police personnel of the Suffolk County, New York Police Department who unlawfully subjected him to and/or failed to protect him from excessive force, including force used in seizing and arresting him, and against the COUNTY OF SUFFOLK, the employer of the above referred to police personnel, which is sued as a person under 42 U.S.C. § 1983 because of its condonation of such police misconduct as that complained of herein. Plaintiff also claims that his federal civil rights were violated as a result of defendants' conduct in maliciously prosecuting him; in addition, he is asserting related claims under the laws of the State of New York.

Jurisdiction

2. This action is brought pursuant to 42 U.S.C. §§ 1983, 1988 and the Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded on 28 U.S.C. §§ 1331 and 1343 (1), (2), (3), (4) and the aforementioned statutory and constitutional provisions.

Parties

3. Plaintiff was, at all times relevant to the allegations of this complaint, and still is, a citizen of the United States and a resident and domiciliary of Suffolk County, New York.

4. At all times relevant hereto, defendants Brendon Forte, Brian Stevens, Scott E. Welshimer, William Plant, Thomas Macaluso, John Shay, Michael Kinahan, Robert Bautz, John Doe, Michael Moe, Richard Roe, Norris Noe, Orin Oh, Peter Poe, and Lawrence Loe, were employed by the Suffolk County, New York Police Department as police personnel. They are

sued individually and in their official capacities; defendants John Doe, Michael Moe, Richard Roe, Norris Noe, Orin Oh, Peter Poe and Lawrence Loe are being sued by fictitious names because their real names are unknown.

5. The defendant County of Suffolk (hereinafter "County") is a municipal corporation within the State of New York and, at all relevant times, it acted under color of law and employed defendants, Brendon Forte, Brian Stevens, Scott E. Welshimer, William Plant, Thomas Macaluso, John Shay, Michael Kinahan, Robert Bautz, John Doe, Michael Moe, Richard Roe, Norris Noe, Orin Oh, Peter Poe, and Lawrence Loe as police personnel.

6. At all times relevant hereto and in all their actions described herein, defendants Brendon Forte, Brian Stevens, Scott E. Welshimer, William Plant, Thomas Macaluso, John Shay, Michael Kinahan, Robert Bautz, John Doe, Michael Moe, Richard Roe, Norris Noe, Orin Oh, Peter Poe, and Lawrence Loe were acting as the agents, servants and employees of the County and they were acting under color of law and pursuant to their authority as police personnel of the County Police Department.

Factual Allegations

7. At about 4:50 p.m. on or about December 25, 2001, behind the dwelling located at 169 Little Plains Road, Greenlawn, New York, plaintiff was subjected to excessive force by defendants Brendon Forte, Brian Stevens, Scott E. Welshimer, John Doe, Michael Moe, Richard Roe, Norris Noe, Orin Oh, Peter Poe and Lawrence Loe, who acted jointly.

8. The abuse of Victor M. Santos included roughly propelling him to the ground; punching and kicking him before and after cuffs were applied to his wrists; one or more of the

individual defendants struck plaintiff with a nightstick; plaintiff was struck in various parts of his person, including the face, back, left ear and arms.

9. The abuse of plaintiff was participated in by each of the individual defendants in that each of them either personally subjected him to excessive ~~force or for~~ the purpose of furthering the harming of the plaintiff, stood by while he was being beaten and made no attempt to prevent or stop the abuse or to protect plaintiff from injury.

10. On or about December 26, 2001, having previously falsely sworn to the truth of an accusatory instrument on which plaintiff was accused of resisting arrest, defendant Welshimer caused a misdemeanor information on which that charge was alleged to be filed in the County First District Court, thereby, without probable cause, commencing a prosecution on the charge of resisting arrest against plaintiff.

11. On or about December 25, 2001, defendant Stevens falsely swore to a deposition on which he asserted that plaintiff bit him; he knew that by doing so, he would cause the commencement without probable cause therefor, on or about December 26, 2001, of a prosecution on a charge of assault in the second degree against plaintiff in the County First District Court, the above referred to prosecution was, on or about that date, commenced against plaintiff.

12. On or about December 25, 2001, defendant Forte falsely swore to a deposition on which he asserted that plaintiff stabbed him; he knew that by doing so, he would cause the commencement, without probable cause therefor, on or about December 26, 2001, of a prosecution on a charge of assault in the second degree against plaintiff in the County First

District Court; the above referred to prosecution was commenced against plaintiff on or about that date.

13. The above referred to prosecutions were commenced maliciously, for purposes personal to defendants Welshimer, Stevens and Forte, including the purpose of giving the false appearance of propriety to excessive force used by the individual defendants against plaintiff.

14. The above referred to charges were later before the Hon. Louis Ohlig, a judge of the Suffolk County Court; Judge Ohlig dismissed each of the above referred to charges and the prosecutions thereon were thereupon terminated wholly favorably to plaintiff.

15. During or about January of 2002, a Grand Jury of the County, influenced by perjury, had indicted plaintiff on the above referred to resisting arrest and assault charges.

16. At about 4:15 p.m. on or about March 26, 2003 near the intersection of Broadway and Lantern Street in Greenlawn, New York, officer Kinahan subjected plaintiff to excessive force.

17. The abuse included striking plaintiff in the right lower back, forearm, thighs and lower right leg with a metal baton.

18. Defendant Shay questioned plaintiff while officer Kinahan was physically abusing plaintiff; for the purpose of furthering the harming of the latter, defendant Kinahan failed to attempt to prevent or stop the abuse, to protest it or to protect plaintiff from injury.

19. At about 5:00 p.m. on or about March 26, 2003, at the 2nd County Police Precinct, plaintiff was subjected to excessive force by Detective Macaluso.

20. The abuse included repeatedly striking plaintiff in the head with a book and twisting and squeezing plaintiff's right arm which had been broken by officer Kinahan.

21. The above described physical abuse was perpetrated at a time when plaintiff's hands were cuffed and fastened by a chain to a wall.

22. While subjecting plaintiff to excessive force, officer Macaluso directed abusive, demeaning language at him, including the use of ethnic epithets.

23. As he was physically abusing plaintiff, defendant Macaluso proclaimed: "Next time you better think twice before suing a police officer", a reference to plaintiff's pending proceeding in this court bearing upon the alleged events of December 25 and 26, 2001 as well as January 2002.

24. While defendant Macaluso was physically and verbally abusing plaintiff, defendant Plant was present, preparing a statement which he intended to and later attributed to plaintiff and proclaiming that plaintiff would sign it.

25. For the purpose of furthering the harming of plaintiff, Detective Plant made no effort to prevent, stop or protest the abuse perpetrated by defendant Macaluso.

26. On or about March 27, 2003, without probable cause, Detective Plant caused accusatory instruments on which charges of Rape in the First degree and burglary in the first and second degrees were alleged, to be filed in the County District Court, thereby commencing a prosecution against plaintiff on each of these charges.

27. On or about the same date, without probable cause, defendant Macaluso caused accusatory instruments on which charges of attempted robbery in the third degree and burglary in the second degree were alleged, to be filed in the County District Court, thereby commencing a prosecution against plaintiff on each of these charges.

28. By the use of perjury and other undue means, including the deliberate wrongful presentation to a Grand Jury of false, coerced statements which were attributed to plaintiff, Detectives Plant and Macaluso caused the indictment of plaintiff on the above referred to five (5) charges.

29. Thereafter, on or about April 27, 2004, a County Court jury, presided over by the Hon. Randall Heinrich, acquitted plaintiff of each of the above referred charges and the prosecutions thereon were thereupon terminated wholly favorably to plaintiff.

30. In causing the commencement and pursuit of the above referred to prosecutions, defendants Plant and Macaluso acted maliciously, for some purpose personal to them, including the purpose of retaliating against plaintiff for having sued county police in connection with the events of December 2001 and January 2002.

30(a). The above referred to malicious prosecutions were facilitated by Detective Bautz, who fraudulently notarized statements attributed to plaintiff and presented them to the Grand Jury; plaintiff had been forced to sign the statements in the absence of defendant Bautz whom plaintiff first met after some ten (10) minutes after he had bowed to pressure exerted by Detectives Plant and Macaluso and signed the statements; defendant Bautz was not in the room where the signing occurred when the signatures were affixed and did not ask plaintiff whether he signed the documents or make any statement at all to him.

31. As a result of the wrongful and malicious police conduct hereinbefore detailed, plaintiff sustained physical injury including to the tailbone; suffered a hearing loss, sustained bruises, including to the lower back, thighs and the right leg, sustained a broken right forearm and lost consciousness; in addition, he experienced pain, including to the head, suffering, fright, emotional distress, humiliation, incurred liability for a legal fee for his defense on the above referred to charges and was otherwise damaged, including experiencing nightmares requiring medication.

32. The abuse to which plaintiff was subjected was consistent with an institutionalized practice of the County Police Department which was known to and approved of by the municipality, the latter defendant having at no time taken any effective action to prevent defendants, Brendon Forte, Brian Stevens, Scott E. Welshimer, William Plant, Thomas Macaluso, John Shay, Michael Kinahan, Robert Bautz, John Doe, Michael Moe, Richard Roe, Norris Noe, Orin Oh, Peter Poe and Lawrence Loe from continuing to engage in such misconduct as that complained of herein.

33. Defendant, County, authorized, tolerated as institutional practices and approved of the misconduct hereinbefore referred to by:

(a) failing to properly train, discipline, restrict and control employees, including defendants Brendon Forte, Brian Stevens, Scott E. Welshimer, William Plant, Thomas Macaluso, John Shay, Michael Kinahan, Robert Bautz, John Doe, Michael Moe, Richard Roe, Norris Noe, Orin Oh, Peter Poe and Lawrence Loe; failing to take adequate precautions in the hiring, assignment and retention of police personnel, including specifically defendants Brendon Forte, Brian Stevens, Scott E. Welshimer, John Doe, Michael Moe, Richard Roe, Norris Noe, Orin Oh, Peter Poe and Lawrence Loe; failing to forward to the County District Attorney or federal authorities, evidence of criminal acts committed by police personnel;

(b) failing to establish and/or assure the functioning of a bonafide and meaningful departmental system for dealing with complaints of police misconduct, but instead, responding to such complaints by confronting citizens with bureaucratic power and official denials, calculated to mislead the public;

(c) establishing and continuing in effect a counterfeit internal "investigation" apparatus calculated to assure and having the effect of assuring County police personnel that abusive treatment of citizens would not be regarded as a serious matter, thereby proximately causing unlawful use of police authority against citizens, including the abusive conduct complained of herein;

(d) establishing and continuing in effect, for a significant period of time, a Claims Investigation Unit, the effects of which were to prevent the Police Department from learning of serious complaints of police misconduct and to protect police personnel whose misconduct resulted in the filing of notices of claim from disciplinary action which might otherwise have been imposed on the basis of misconduct alleged in such notices, thereby communicating to County police personnel, including defendants Brendon Forte, Brian Stevens, Scott E. Welshimer, William Plant, Thomas Macaluso, John Shay, Michael Kinahan, Robert Bautz, John Doe, Michael Moe, Richard Roe, Norris Noe, Orin Oh, Peter Poe and Lawrence Loe, the municipality's condonation of abusive treatment of citizens;

(e) failing to implement proper procedures, guidelines and/or policies regarding the duty of police personnel to protect persons, including the plaintiff herein, from verbal and physical abuse;

(f) allowing, condoning and/or permitting County police personnel to maliciously prosecute and physically abuse citizens so as to avoid conflict with a politically powerful union.

34. As a consequence of the abuse of authority detailed above, including the County's condonation of police misconduct, plaintiff sustained the damages hereinbefore alleged.

COUNT I

FEDERAL CLAIMS

35. The allegations set forth in paragraphs 1 through 34 are incorporated herein by reference.

36. The hereinbefore described actions and omissions, engaged in under color of state authority by defendants, including defendant County, sued as a person, responsible because of its authorization, condonation and/or approval of the acts of its agents, deprived plaintiff of rights

and immunities secured to him by the Constitution of the United States including, but not limited to, his Fourth Amendment rights to be free from malicious prosecution and from excessive force in connection with his arrest.

COUNT II

SUPPLEMENTAL CLAIMS

37. The allegations set forth in paragraphs 1 through 34 are incorporated herein by reference.

38. Heretofore, plaintiff timely caused a written verified notice of claim to be filed with and served upon the proper agents and employees of the County pursuant to the statutes in such cases made and provided with the result that a municipal hearing was conducted; the content of the factual allegation set forth in the notice is incorporated herein by reference.

39. More than thirty (30) days have elapsed since the service of the notice of claim and adjustment or payment has been neglected or refused.

40. The acts and conduct hereinbefore alleged constitute assault and battery, negligence and gross negligence under the laws of the State of New York; based on its flawed procedures and derelictions, the County is liable to plaintiff as well as under the doctrine of respondeat superior; this court has supplemental jurisdiction to hear and adjudicate these common law claims.

WHEREFORE, plaintiff demands the following relief:

(a) Compensatory damages, jointly and severally against all the defendants, in an amount to be determined by the jury;

(b) Punitive damages against each of the individual defendants, in amounts to be determined by the jury and

(c) Such other and further relief, including costs and reasonable attorney's fees, as this court may deem appropriate.

Dated: Islip Terrace, New York
August __, 2004

Yours, etc.,

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